

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISIONAward No. 29997
Docket No. MW-29388
94-3-90-3-306

The Third Division consisted of the regular members and in addition Referee Charlotte Gold when award was rendered.

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employes
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(Duluth, Missabe and Iron Range Railway Company

STATEMENT OF CLAIM: "Claim of the System Committee of the Brotherhood that:

(1) The Agreement was violated when the Carrier assigned Class B. Machine Operators instead of Track Laborers G. Grote and J. Scott to perform the work of cleaning snow from switches in the Two Harbors Yard at Two Harbors, Minnesota on December 25, 1988, from 7:00 A.M. through 3:00 P.M. (Claim No. 12-89).

(2) The Agreement was violated when the Carrier assigned Class B Machine Operators instead of Track Laborers T. Mesojedec and J. Luoma to clean snow from switches in Two Harbors Yard at Two Harbors, Minnesota on January 13, 1989, from 3:30 P.M. through 11:00 P.M. (Claim No. 14-89).

(3) As a consequence of the violation referred to in Part (1) above, Track Laborers G. Grote and J. Scott shall each be allowed eight (8) hours of pay at their respective time and one-half rates.

(4) As a consequence of the violation referred to in Part (2) above, Track Laborers T. Mesojedec and J. Luoma shall each be allowed eight (8) hours of pay at their respective time and one-half rates."

FINDINGS:

The Third Division of the Adjustment Board upon the whole record and all the evidence finds that:

The carrier or carriers and the employee or employees involved in this dispute are respectively carrier and the employees within the meaning of the Railway Labor Act as approved June 21, 1934.

This Division of the Adjustment Board has jurisdiction over the dispute involved herein.

Parties to said dispute waived right of appearance at hearing thereon.

At issue in these combined claims is the job of cleaning snow from switches at the Two Harbors Yard on December 25, 1988, and January 13, 1989. Carrier assigned Class B Machine Operators to perform the work. Claimants Grote, Scott, Mesojedec, and Luoma hold seniority as Group D. Track Laborers within the Track Department and they allege that they should have been assigned the work. Claimants Grote and Scott lay claim to the work done on December 25 (performed by Messrs. Gilbert and Meyer, who hold seniority in the Track Department but who were regularly assigned and working as Group B Machine Operators). They seek payment on an overtime basis. Claimants Mesojedec and Luoma ask for compensation at the overtime rate for the work done by Messrs. Gilbert and Meyer on January 13.

The Organization maintains that work accrues to Track Laborers under the parties' Agreement by virtue of Rule 26 (i), a Classification of Work Rule:

(i) An employee assigned to performance of work in connection with construction, maintenance and dismantling of tracks, switches and maintenance of roadbed and right-of-way, removal of snow, ice and other obstructions shall be classified as a Track Laborer.

Under Rule 9, the seniority of employees assigned to the position of a Class B Machine Operator are restricted to the Group B seniority roster of the Track Subdepartment. They may not perform work done by those with Group D seniority. Under Rule 20 (Division of Overtime), employees doing a specific job during regular hours are to be given overtime for work continuous with that particular job. Gilbert and Meyer did not perform snow and ice removal during their regular assignments on January 13; December 25 was not a regularly assigned work day. Thus, they were not entitled to this overtime work.

Carrier maintains that Machine Operators Gilbert and Meyer were brought in to engage in snow removal using front-end loaders. When they completed their primary tasks, they cleaned snow from switches for the remainder of their shifts (that is, for less than six hours). It argues that the work in question is not reserved exclusively to one group within the Track Department under the parties' general Scope Rule or to Track Laborers (to the exclusion of all others) under Rule 26. Nothing in Rule 26 prohibits an employee in a higher classification from performing

lower-rated work Rule 24, Composite Service, in fact recognizes the propriety of doing so.

This Board has reviewed the record of this case and concludes, on balance, that Carrier did not act inappropriately, given the facts present here. While the work of cleaning snow from switches principally is performed by Track laborers, this Board cannot conclude from the presence of a Classification of Work Rule or from Rule 9 that the work must be done by Track Laborers to the exclusion of all others. Each case must be reviewed on its merits.

On the two days at issue here, the major task that had to be performed was the removal of snow on a section of track using front-end loaders. This could only be done by Machine Operators. When this task was completed, the Machine Operators were used to clean snow from switches for less than six hours. Under the circumstances present here, the amount of time in which higher classified employes performed lower classified work was not excessive. Given the lack of sufficient support for these combined claims, they must be denied.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: Catherine Loughrin
Catherine Loughrin - Interim Secretary to the Board

Dated at Chicago, Illinois, this 21st day of January 1994.